MODERN CONSTITUTIONS

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MODERN CONSTITUTIONS IN OUTLINE

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AN INTRODUCTORY STUDY IN POLITICAL SCIENCE

BY

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PREFACE

PLANNED originally to meet the needs of those University students who are expected to show a general knowledge of modern constitutions, and who lack the time or the energy to gather the requisite information by a wide course of varied reading, this little book has been put together in the hope that it may prove equally serviceable to the busy general reader who is desirous of acquiring an insight into the same subject, if only in order to follow without difficulty the foreign intelligence in the daily papers. The writer has aimed at producing, not a complete encyclopædia of constitutional facts, but a brief readable introduction to a complex subject. With that end in view, he has endeavoured, by a rigorous subordination of the insignificant, and a still more rigorous excision of everything that is irrelevant to his main purpose, to compress his material within the narrowest possible compass. The subject is one on which many lengthy volumes might easily be compiled. The writer of this, while seeking to present something more than a bare skeleton of dry facts, has aimed, first and last, at the merit of brevity.

It is a feeling of incongruity alone, not an unwillingness to acknowledge obligations, which prevents him from appending a lengthy list of works consulted.

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PART I

GENERAL PRINCIPLES

CHAPTER I

INTRODUCTORY

§ 1

FOR the study of the group of governmental institutions which have survived on the continent of Europe, in Great Britain, the British Dominions beyond the seas, and the United States of America, the historical method is no doubt the only quite satisfactory method. But it is a method which requires time and patience, and has to be applied to each member of the group individually. This study forms what may be called the core of the history proper of each of these countries taken separately; the wars, revolutions, and dynastic changes which form the bulk of the matter narrated gathering their main interest from the way in which they have affected the course of constitutional development. Certainly no constitution can be rightly understood except by the student who is familiar with the conditions, social, economic, and international, out of which it has sprung. And it is equally true

that if the existing state of any particular constitution be studied as if it had already put on its complete and final form; as if it were a dead thing liable to no further development; in a word, as if the study were a study not of dynamical but of statical problems, of constitutional anatomy rather than of physiology, the student is certain to acquire an obscure and misleading view of that which he is seeking to master.

But, though all this is granted, there is a great advantage in obtaining as clear and precise a view as possible of the leading points of the most interesting and important of European and Colonial constitutions as they appear at the opening of the twentieth century. The view obtained may be imperfect; it need not be misleading, if the student bears steadily in mind that he is observing, as if it were already petrified, something that is really in a state of flux, and that constitutions, even though carefully and elaborately made to order, still grow and develop like other social factors, the origin and history of which may seem at first sight to be more "natural."

Even for the historical student whose main interest lies in the past evolution of English politics, there is an advantage in beginning with the study of the English constitution in the year 1905, and afterwards working towards that year from some earlier date. No text-book on English history, however elementary, can, when dealing with the past, avoid frequent reference to, and comparison with, the England of to-day. Much, if not most, of what we read in the earlier

chapters of our economic, constitutional, and international history gains its chief significance from its outcome in existing facts, and no historian can afford to sacrifice the advantage he gets in vividness of presentment from frequent contrast of the past with the present. In other words, the right starting-point for a course of historical study, which is not to be a dead but a living study, is usually the point which is chronologically latest. The physiology of infancy and the training of youth have no meaning apart from the phenomena of adult life. And though a political community cannot properly be called an organism, still, like an organism, it can only be satisfactorily studied as something which is in process of becoming; neither the end towards which it is evolving nor the source from which it has originated being ever more than momentarily forgotten. The most elementary and unscientific of historical text-books recognize these truths, though generally in a confused and half-hearted way. They assume from the beginning some knowledge of the end; but generally leave the reader with half impressions of both beginning and end, because the facts with which they deal have not been set forth in their proper order—an order which is not, save in exceptional cases, the chronological order.

§ 2

One of the first tendencies which most readers will find it necessary to discard at the outset is the

attempt to classify and label constitutions as if they admitted of being dealt with as Euclid treats the various kinds of triangles and quadrilaterals which adorn his pages. With political labels we are all familiar. Our first questions about an unknown constitution bristle with classificatory names. Is it a monarchy or a republic (we ask), an empire or a federation? Is it a democratic country? Is it a theocracy or an oligarchy?

Had we to deal with many hundreds of constitutions, all established in countries roughly similar in size and character, there would probably be a considerable saving in time and brain-wear in splitting them up into groups, even as the zoologist and the botanist do with their material. Such was the plan adopted in the first treatise on constitutions, Aristotle's *Politics*. But Aristotle's states were all roughly similar. They were all city states. For though Aristotle spent a considerable part of his life at the court of Philip and Alexander the Great, he never seems to have felt that Macedon was really a state. It was too large, and its political life too faint and diffused. It made little attempt to satisfy the purpose and achieve the end for which he held that the state exists—"coming into being for the sake of mere life, but continuing in being for the sake of a higher life." To him, it was very much what Russia and Turkey seem to us, mere agglomerations of human beings held together by their submission to a common superior, but scarcely animated by the consciousness of possessing any corporate life. And, indeed, in the ancient world

and the mediæval world there was little possibility of the evolution of a state of the size of England or France endowed with the vitality and the conscious coherence of the city states of Ancient Greece and Mediæval Italy. Distances were too great. Communication was too imperfect and too slow. It was impossible for the great majority even of free men to take an intelligent interest in affairs of State, distracted as they were by the recurrent danger of invasions and rebellions, and the difficulty of keeping open their lines of trade or of preserving their opportunities of a precariously self-supporting industrial life. The modern form of state is the outcome of conditions of comparative peace and security, and could only come into existence after the great powers of Europe had each become consolidated, generally under the vigorously despotic rule of some Louis XI. or Henry VIII.

Dealing with a group of states resembling one another in being all city states and practically all of them Greek, Aristotle found it possible to classify them by noting whether a single man carried on the work of government, or a minority of the citizens, or the totality of them, and by noting also whether the government was carried on in the general interest or in the interest of the ruler or rulers. Thus we get the familiar sixfold division of states into monarchies, aristocracies, and polities, despotisms, oligarchies, and democracies. The reader of Seeley's *Introduction to Political Science* will not need to be reminded that these divisions are scarcely applicable in the description of

modern states. In no country state, even one as small as Belgium, could all the citizens participate in the work of government, nor in such a state could the whole work of government centre in the hands of a single ruler. Our typically "democratic" arrangement, that of electing our legislators and administrators by the votes of the great majority of the citizens, would be in Aristotle's eyes an extraordinarily *aristocratic* institution, being aimed, as it ostensibly is, at securing the choice of the best men for the work.

No such convenient classification is available for our purposes, though we may often find use for the adjectives and the adverbs which go with Aristotle's class-names, describing France as more democratic than Germany, or the powers of the American President as more monarchical than those of his Swiss analogue.

Nor do we get much help from Seeley's fourfold division of states in accordance with their more or less of local government—centralized and decentralized unitary states, federations, and confederacies. The definitions, as Seeley gives them, are too vague; the boundaries between class and class too shifting. The terms, however, are convenient ones, and we shall make incidental use of them. But the essence of federalism can hardly be said to lie where Seeley would place it, and before we use the term we shall have to define it more searchingly.

With his tripartite division of states into tribal, theocratic, and political, we have nothing to do; for

we deal here with the products of modern civilization only. And his other line of division into organic and inorganic states (meaning by "organic" resulting in the main from internal growth, though in response, of course, to external pressure) will not be of any but negative use. We deal here with constitutions and organic growths, not with unconstitutional despotisms.

But luckily the states of which we treat are few in number. Outside Great Britain and the British Colonies, the United States, France, Italy, Germany, Austria, Scandinavia, and the smaller states of Europe, constitutional forces are so insignificant, and political life so slight and precarious, that other countries than these can scarce furnish more than an occasional useful contrast. We shall confine ourselves, therefore, to the countries above enumerated, leaving on one side those, like Russia and Turkey, which possess no constitutions worthy of the name.

CHAPTER II

FEDERALISM AND THE BICAMERAL SYSTEM

§ 3

In nearly all modern states that possess anything resembling our parliamentary system the legislature is divided into two chambers. With the exception of Greece and some of the minor divisions of the German Empire there is no European state which does not follow this regular rule. The same is the case with the American Union, and by far the greater number of our self-governing colonies (Manitoba, Ontario, and British Columbia form exceptions); and even in the black republic of Haiti we find, set beside the negro House of Representatives, an august assembly of dusky senators. In most cases this duplication of the legislature has been copied from the English model, though in Hungary it is said to be indigenous. But of no two countries can it be said that their upper chambers perform precisely identical functions.

This division of the legislature serves one important purpose in tending to check over-hasty action. It affords time for reconsideration (in the same way as is done by the English practice of insisting that a

bill be read three times), while it leaves the reconsideration to be undertaken by a different body of men. It is usually the case that this second body is composed of legislators who, compared with the members of the more important house, are less liable to hasty action (either because older or wealthier, or more experienced) and less afraid of popular passion (because their tenure of power is comparatively stable).

§ 4

But the second chamber is generally found to be strongest, because most necessary, in those countries where there is not complete unification of sentiment, and where, therefore, separate interests call for distinct recognition. Thus a second chamber is almost indispensable in a federation such as the United States, Australia, or Switzerland. For federation is essentially a compromise—a compromise, not as Freeman has described it between the large state and the small (for there were federations of cities in the ancient world, which, even in combination, formed but small states, and there are federations of great provinces in the modern world, which, even separately, are great states); nor yet as Seeley would have it, a compromise between a constitution favouring much and one favouring little local government (a definition of federalism which leads to the grotesque conclusion —which Seeley faces quite boldly—that the Ottoman

Empire of to-day, the Persian Empire under the satraps of Xerxes and Darius, and the mediæval kingdoms in the days of feudalism, are to be taken as types of federations; while it ignores the obvious fact that "local government" is a term better applicable to the administration of towns and counties within the great states that form such a federation as the American Union than to the administrative systems of those states themselves). A federation is more rightly described as a contract state, a partnership formed by the mutual agreement of members equal in legal status, and not greatly unequal in actual power. It is a compromise between the complete unification of the whole, and the complete independence of the contracting units; a halfway house between an alliance of independent equals and a completely unified state. A federation is almost always in process of disintegration or of closer coalescence. Its formation is the prelude to the break-up of a unitary state (the separate parts being budded out like the younger members of the United States or the Dominion of Canada, and receiving each a separate legal status which cannot be forfeited without its own consent), or else it is the first step towards the complete merging of several states into one.

§ 5

Now, this compromise, between complete unification on the one hand and the isolation of independence on the other, is nearly always represented, and is surely most fitly represented, by a house in which the separate states appear as political units, while a larger house symbolizes the national unity. Where the federating states are equally represented in the smaller federal chamber (as in the United States, in Switzerland, and in Australia), we have a purer type of federation than where they are unequally represented (as in Canada or Germany). Similarly, where the federating states are nearly on an equality as regards actual power (as in Switzerland or Australia), we have generally a more perfect federation than in an empire like Germany, where the strong military power, Prussia, is united with many small principalities and even a few self-governing cities. Further, in the purest type of federation the powers of the common legislature and executive cannot be increased without the consent of the federating units. If the powers of the several states can be seriously modified without their wishes being consulted, it is rather to be described as a decentralized unitary state than as a true federation.

But a second chamber may equally fitly represent some compromise required by a division of interests which is not merely or mainly geographical. One

portion of a nation may be so much wealthier or better qualified to govern than another that the separate wishes of the different sections are most fitly expressed through separate legislative bodies. Such was the case with most mediæval parliaments, in which the diverse interests of clergy, nobility, city men, and peasantry, and the diverse amounts which they were separately able to contribute to the national treasury, generally led to a threefold or fourfold division of "estates of the realm." In Sweden a fourfold legislature of this kind survived until 1866.[1]

§ 6

Of all the second chambers with which we shall have to deal the French Senate is probably the weakest. And on *à priori* grounds, applying the reasoning of the last few paragraphs, this is exactly what we should have expected. Modern France is the most centralized of unitary states. The departments, which form the senators' constituencies, are mere geographical expressions, having no history or separate traditions and very little corporate life; and labelled almost all of them with the names of rivers —Maine-et-Loire, Seine-et-Oise, Seine-et-Marne, and so forth. Such artificially created divisions can give no vitality to the house which represents them.

[1] Incomplete fusion may of course find its expression in other very different constitutional arrangements—such as the remarkable provisions for giving to the Roman *plebs* powers proportioned from age to age to their growing strength. Students of mediæval history will remember the still more complicated constitution of the distracted city of Florence.

France, moreover, claims to be above all countries the land of liberty and equality. There are no separate class-interests to be represented in a separate chamber, and if such interests existed French statesmen would do their utmost, not to recognize, but to obliterate them.

The French Senate therefore serves no special function of class or provincial representation. It has no venerable traditions like our House of Lords ; no clear *raison d'être* like the American Senate. It is, therefore, natural that it should have declined steadily in importance, till it has become a mere shadow of what it was intended to be, possessing little dignity and still less political influence.

§ 7

In sharp contrast with this may be set the American Senate. Intended, when the constitution was framed, to act as a sort of advisory body, an executive council as it were, with which the President might consult, it was composed of two senators from each of the federating states—then thirteen in number. Like executive councils elsewhere, it was allowed the privilege of secret debate, which even yet it has not quite abandoned. To it also were allotted several most important administrative functions. Its consent is required to the appointment of all the higher federal officers, and, except in the case of the members of the President's cabinet, its control is by no means nominal. Its approval must be given before any treaty can

be ratified—a sad tax often on the patience of other nations, and a serious offset to the President's despotic power.

Here, then, we have a second chamber whose existence is called for by the existence of separate state interests, each of the federated states having its own traditions and its own distinctive state life; a chamber, moreover, that has definite and important tasks assigned to it, and which has therefore quite naturally grown in power, till it has become the stronger instead of the weaker division of the legislature. There is, perhaps, no other equally important second chamber in the world. It has formed the model for other federal senates, as the English bicameral system has for the bicameral systems of nearly all the world.

§ 8

The upper chambers of the chief federal legislatures show considerable variety of composition and function. Thus in Switzerland each canton decides for itself whether it will send its two members for a short period of service or a long, and also whether it will elect them by popular vote or in the cantonal legislature. United States' senators are elected by the legislatures of the different States, each senator sitting for six years, one-third of the house being elected every other year. In Canada the senators are nominated for life by the federal ministry, unequal numbers being allotted to each province in a certain

recognized proportion. The German Bundesrath is practically a council of ambassadors, commissioned by the separate state governments for irregular periods of service. The Australian senators are elected by popular vote, each state counting as a single electorate and sending up six senators; and one-half the number retire every third year.

Seeing that the second chamber embodies the idea of the corporate life of each member of the imperfectly unified state, as our English House of the Communes originally represented, not portions of the total population, but incorporated boroughs, universities, or counties which were not mere geographical names, it would seem most appropriate that federal senators should vote according to instructions, or at least strictly in accordance with the views of the state legislatures or governments that have given them their commission. This is the plan adopted in the German Bundesrath, but not elsewhere, though it is worthy of remark that in the early days of United States' history a senator has resigned on finding himself out of touch with his state legislature. American senators now give their vote according to their personal views of the requirements of the situation, as is also the practice in the upper houses of Canada, Australia, and Switzerland, and in the Austro-Hungarian delegations.

Among non-federal upper houses there is even more variety of form, if not of function. In the cases of Austria, Hungary, and Prussia, the second chamber consists largely, though not exclusively, of hereditary

members. In Italy, Portugal, and certain of our own colonies, it is composed mainly of life members nominated by the crown. In other British Colonies it is chosen by a restricted electorate from candidates possessing certain property qualifications. In Norway it is chosen by the members of the lower house from among their own number, much as aldermen are elected in certain of our county councils. The upper houses of Denmark, Holland, Spain, and Belgium will receive brief mention later on (§ 30).

§ 9

The work of constitution-making is largely a matter of framing workable compromises. So far we have been dealing with compromises necessitated by imperfect unification of national sentiment. We have now to discuss those arising out of the unavoidable diversification of social functions.

Neither form of complication could well arise in a primitive community under patriarchal rule. Those necessitated in the modern country state by the separation of central and local administration could scarcely affect the city states of ancient and mediæval times. On the other hand, the separation of Church and State in most modern communities has eliminated one troublesome source of confusion, and permits us to ignore the priestly function as if not properly national.

Chapters III. and IV. will deal with compromises due to the antagonistic activities of legislative, executive, and judicial organs.

CHAPTER III

THE PARTY SYSTEM: GOVERNMENT BY CABINET

§ 10

ESSENTIAL to the working of the party system, run on the English lines, would seem to be, firstly, a general agreement on certain fundamental principles of supreme importance, and secondly, a willingness to ignore really trifling points of difference in order to attain those ends for which a parliamentary party is organized.

Now, in England all parties are fairly agreed on certain main points: that there shall be at the head of affairs an hereditary monarch, that there shall be two Houses of Parliament, of which one shall be an elected chamber, that the power of the purse shall attach to this elected chamber, that the administration of affairs shall be in the hands of a committee called the Cabinet, representing the party which happens to be strongest in the elected House, and so forth. But this has not always been so, even during the last two centuries. Throughout the reigns of the first two Hanoverian kings the Jacobites were not reconciled to the existing order, and not ready to recognize it. During

these two reigns, therefore, the party system was practically in abeyance. There was no thought of an alternation of Whig and Tory Governments. The Tories were what are called on the continent "irreconcilables." They stood outside the party system, and until they became reconciled to the new order, and willing to recognize the reigning dynasty, they could have no part or lot in that system.

What was true of England and the Jacobites of the early eighteenth century is also unfortunately true, more or less, of most European countries to-day. In France there are still a certain, though diminishing, number of politicians who desire the reinstatement of the Napoleonic family or the old royal house. In Austria-Hungary nearly every one of the nationalities that are united under the common rule of the Austrian Emperor is dissatisfied with its proportion of political influence, the dissensions between the various component parts of the dual monarchy leading to continual deadlocks. In Germany, and to a less extent in other continental countries, the Socialist sections of the community are bitterly opposed to the established order. Now, in so far as this is the case, a true party system (the English being taken as the typical example) cannot come into existence. There must, first of all, be a general agreement upon fundamental points.

But equally there must be a certain indifference about really petty points. If each member of a political party insisted on following his own judgment on every tiny matter of detail, regardless of consequences,

the party would fall to pieces immediately. Each member must agree to forego his right of judgment on minor questions, and vote against his convictions in order to enable the party to achieve its larger aims. This is what is called party discipline. It grew up during the period of the Whig ascendancy, when it was favoured by the fortunate fact that the government had fallen into the hands of a group of great country families which could bring family influence and family traditions to bear to co-operate with the national need of their presenting an undivided front.

The proper limits of the claims of party discipline afford one of the most difficult problems that the conscientious statesman is ordinarily called upon to face. A question is debated on which he feels deeply. He finds his views opposed to those of his party leaders. He believes in the party system, and recognizes the necessity, if it is to be maintained, of party discipline. Ought he to set aside his own convictions for the benefit of the party, or sacrifice his party's interests for the sake of a measure which he believes important?

The question can only be decided by him after a careful balancing against one another of the relative importance and the relative probability of certain results following from his decision. He must weigh against one another the benefits that are likely to accrue from the passage of the measure to which his party is opposed, and the benefits that he expects to result from his party's continuance in power. He must consider both the probable effects of his vote and

influence in achieving his immediate aim, and their remoter consequences in weakening his friends, and therefore himself, in other matters possibly of much greater importance. His decision must be taken only after a careful balancing of *pros* and *cons*, in which political theory cannot help him, but only practical judgment.

§ 11

It is here especially that to English observers French politicians seem most seriously lacking. There is no party coherence. Apart from the irreconcilables—Socialists, Orleanists, Napoleonists—there are no compact parties bent on achieving certain large ends. There are instead a great many small groups which seem to break up and re-form with kaleidoscopic inconsequence and rapidity. Each striking figure in the political arena is like a feudal baron with a small personal following, and a French Cabinet is the result of a grouping of a number of these leaders. The defeat of a French Ministry does not mean the transfer of political control from one great party to another. It does not necessarily mean anything more than a change of premiers, the new premier taking up into his cabinet several members of the defeated ministry, possibly even the defeated prime minister himself.

The party system in France may, therefore, be said to be a failure; partly because those politicians who

are agreed in accepting the Republic in its present form have not any other large aims in view to cause them to unite in parties of considerable size; partly because they cannot agree in sinking minor points of difference in order to secure the permanence of a tried and successful cabinet; and partly also as the result of certain constitutional provisions governing the relations of cabinet and legislature which will now be described.

§ 12

If we contrast the position of an English Prime Minister in the twentieth century with that of a statesman, such as Pericles, in an ancient city state, we see that the former's tenure of power is likely to be much more stable owing to certain fairly obvious reasons. The English Prime Minister serves two masters. If the House to which he owes his elevation turns against him, he can destroy it and appeal for support to the nation (or even possibly hold office for a time, relying on the support of the sovereign till smoother times come round—though this is scarcely now conceivable, unless the country passes again through some great crisis, such as that at the end of the eighteenth century); while, on the other hand, he may continue to act as if quite indifferent to the general feeling of the nation, provided only the majority in the House is for him.

Pericles had no such choice of alternatives. The

House which he addressed was the assembled nation.[1] He had to carry it with him on large and small points alike. No one was likely, for the sake of strengthening the leader's position, or for the sake of sparing his feelings, to vote on any matter contrary to his own view of right or expediency.

The English House of Commons makes the Ministry, but the Ministry can unmake the House. The two mutually govern one another. And as neither desires to have its existence cut short, each is ready to make concessions to the other for the sake of permanence. Moreover, though the Ministry is expected to retire, or dissolve the House, when defeated on any serious question (among serious questions being included any alteration in the Budget, however apparently trivial), its resignation is not expected to follow on a chance defeat in a half-empty House, or a defeat on a matter of petty detail.

§ 13

The French system presents several remarkable contrasts—so serious that they may be said completely to outweigh the resemblances. In the first

[1] The modern representative system may be regarded as a temporary expedient adapted to a period in which the nation is no longer small enough for its citizens to form a single assemblage, but does not yet possess such widely diffused knowledge and such means of communication as to enable it to discard the intermediate body and once more directly to control the Executive.

place, the responsibility of the French Ministers is of law, not of custom. If a hostile vote on the most insignificant matter is moved in a certain regular form (called the interpellation) and carried against the Ministry, carried perhaps in a half-empty House, or in a sudden fit of dissatisfaction arising without due cause, and given effect to after very scanty deliberation, the defeated Government must resign. Secondly, the French Ministry has not at its disposal the weapon which is so effective under the English system—the veiled threat of dissolution. The French Ministry can only dissolve the House with the consent of the Senate (the French Upper Chamber, which corresponds, remotely, to the House of Lords), and this consent must be obtained through the President, who, though little more than a figure-head in most matters, might hesitate before agreeing to a dissolution.

Thus the French Ministry is wholly at the mercy of the House, which can strike it down without fear of being struck back; while the English Ministry, which is allowed, as the French is not, to ignore chance votes and passing spasms of ill-will, can often ward off a serious danger of defeat by suggesting that the country may not hold quite the same views as the House, and that in any case the country's opinion is likely to be asked.

§ 14

Nor is this the only weak spot in the French Cabinet's position. Though generally spoken of as the Administration or the Executive, the English Cabinet's real strength and significance (apart from the control of foreign affairs) lies in its being the originator of all financial and most legislative proposals. No private member of the House of Commons ever ventures to propose an addition to the Budget,[1] and the most trifling reduction in the Cabinet's financial demands is treated as equivalent to a vote of want of confidence. In important legislative matters, also, the House must surrender its judgment to the Cabinet, unless it is prepared to face either a dissolution or a change of ministries. Neither of these alternatives is usually pleasant to the majority of the members. For it is the majority that has put the ministry in power; and a ministry chosen from the opposite party is likely to be even more completely at variance with the majority's views than the displaced ministry; while the distaste of members for a dissolution is too natural to require special comment.

The French Ministry, owing to what is called the "committee system," has nothing like the same

[1] As a significant variation from the English model, it is worth noting that in the first Parliament of the Australian Commonwealth Mr. Barton's Government allowed a private member to move an increase in the estimates. Such approximations towards the "Swiss system" generally meet with applause locally, as being movements in a desired direction.

control over legislation and finance. This "committee system" is to be found in the German, Italian, and American legislatures, as well as the French. Its ostensible purpose is to secure for such legislative propositions as require special knowledge, a more thorough investigation than can be expected from the discussion of all measures indifferently by the whole House.

The French House of Deputies is divided by lot every month into "bureaux" or divisions of the house, from which are chosen committees consisting of an equal number of members from each bureau. The business of these committees is to perform the preparatory function of discussing and shaping measures before they are brought before the House. They are reconstituted monthly, but some of them (those that deal with such matters as the army or the state railroads) are practically permanent. There is also one annual committee which deals with finance.

Now, the Cabinet has no control over the election of the committees, nor have Ministers, however strongly they may be interested in the measures, any right to be present at the committees' discussions; and after matters have been threshed out in committee, neither the Ministers nor any other members have much hope of introducing substantial alterations. Thus the Cabinet can exercise little influence over the general course of legislation, and has, moreover, to make its general policy fit in, as well as circumstances permit, with the financial arrangements proposed by the budget committee.

A very similar arrangement is to be found in the American House of Representatives. But there the committees are chosen, not by lot, but by the Speaker of the House, and thus legislation does show a certain measure of coherence which is lacking in France. Not a very great measure, however—as may be guessed from the fact that one committee deals with Ways and Means (or the methods of raising the revenue and the amount of it), while another has to do with Appropriations (or the methods of utilizing the revenue and the amounts to be spent). Owing to the extraordinary power of nominating committees thus placed in the hands of the Speaker, he becomes quite the central figure in all matters connected with legislation. His election is a question of the keenest party strife, and, unlike the Speaker of the English House of Commons, who is expected to forget all party bias immediately after his election, he always belongs to, and favours (in the choice of committees, at any rate) the party which is in the majority, and to which of course he belongs.

Both in France and America, therefore, legislation and finance lack the unity of conception that they possess in England, and something approaching "government by mass meeting" is the rule in both. In the American House, indeed, it is impossible for a measure to be properly discussed out of committee, because the building itself is so badly constructed that few members can hear what speakers are saying, even if they wish to do so. All attempts to influence legislation, therefore, must

be made, not in the debates of the House, but in committee.

In Germany the Bundesrath (of which a fuller description will be given hereafter) does exercise a very real control over legislation in the Reichstag, and the more important budgetary matters are settled in advance for several years at a time. Thus, though the committee system is to some extent in force, it does not dominate the whole course of legislation.

CHAPTER IV

THE DEMARCATION OF POWERS

§ 15

THE mutual relations of the executive, judicial, and legislative bodies are among the first points to be examined when a foreign constitution is under discussion. The three powers must to some extent overlap. In England, the executive and the legislature, as has been already pointed out, mutually govern one another. The judges are appointed by the executive; when appointed they can pass judgment freely on cases in which the executive or its servants are involved; and they can only be dismissed by the legislature.

This happy arrangement is to be found nowhere else, except in some of the British Colonies. To no small degree it is due to our comparative immunity from the more serious dangers of war. We can afford to subordinate our administrative officials to the ordinary procedure of the courts, and to consider also the advantages of personal freedom at the expense somewhat of governmental vigour. Continental powers shrink from doing this. They feel that the enemy is

for ever at their gates, and that the state must have its hands strengthened and be able at any moment to act freely, whether against anarchy within or foreign hostility without its borders.

Thus there has grown up in all the chief countries of Europe a system of separate Administrative Courts. These are completely under the control of the executive (resembling somewhat our courts martial), and in them are tried all cases in which officials in their official capacity are concerned.

Officials on the Continent are therefore able to act boldly and decisively when occasion arises, being assured that their courts will protect them from the consequences of any indiscretion, if the smallest justification can be found for what they have done; while English officials, who are liable of course to dismissal for disobedience to their superiors, are also amenable to the courts if they have dared to obey orders which have necessitated a breach of the law.

§ 16

In America nothing of this kind is to be found. Indeed, the American judiciary seems at first sight more strongly placed than the English; for, like all other judiciaries, its business is to interpret laws, and, when laws of different degrees of authority conflict, to give its sentence in accordance with the higher

law. But the highest of all laws in the United States is embodied in the written constitution (unless it be true that American judges will override the constitution where it conflicts with International Law); and when an Act of Congress clashes with the constitution, it has to be ignored by the judges as being no law at all.

Similarly, in the various British Colonies the judges are bound to interpret the constitution—in this case a law imposed from above by the Home parliament, instead of from below by the will of the people—as well as the acts of the colonial legislature. Only in these two cases—where the nation itself or an external power limits the action of the legislators—can the judges declare laws "unconstitutional." But the extraordinary power is due to the special limitations placed on the legislature, and not to any fundamental difference in the commissions of the judges.

§ 17

The framers of the American Constitution were bent on carrying out to its logical extreme the impossible doctrinaire theory of the separation of the three powers, and hence to some extent their remarkable exaltation of their judiciary. But it was also because they ascribed their revolutionary troubles to the excessive strength of the English Crown in the time of George III. that they went a step further in

carrying out the theory. They dreaded the predominance of the Executive. Now, George III.'s parliamentary influence was largely the result of corruption, and one leading method of corrupting members of parliament was by the bestowal of lucrative offices of State. To prevent the growth of a similar evil in their own country, the constitution framers decided that neither the President nor any member of his cabinet should be allowed to sit in Congress; they ordained that all appointments to higher offices should require the sanction of the Senate; and they further weakened the President (as they thought) by giving him a comparatively short tenure of office, apparently overlooking the fact, however, that they were at the same time strengthening him (as compared at least with an English prime minister) by making that term definite.

Thus we have in the United States a totally different system from the English. The cabinet consists of men who may never have sat in Congress, and who are not responsible to any one but the President; while the President is irremovable, except by assassination or impeachment, during his four years' term, and may belong to a party which is in a hopeless minority in both divisions of Congress. The cabinet is not held together by any collegiate spirit, but each minister conducts his separate department with very little reference to the others, and when communications with the Houses are necessary, they are carried on in writing.

§ 18

In one other important point does the relation of executive to legislature admit of considerable variation. In England and America an endeavour is made to frame laws with such minute attention to detail that there may be no scope for misunderstanding and little room for the exercise of official discretion. In other countries (in France and Italy especially), while the broad principles of a law are laid down in the legislature, the minutiæ are often largely left to the discretion of the administration. Thus the French and Italian Cabinets are given a large measure of legislative power—a power of supplementary legislation such as was claimed and exercised by the English Privy Council in Tudor times.

§ 19

But not only is it necessary to note how far the executive, legislative, and judicial bodies are mutually controlled by one another or trench on one another's ground, it is also necessary to observe how major and minor legislatures, executive bodies, and judiciaries are related one to another. In a unitary state such

as England or France there is usually no complication, the national legislature assigning to each organ, local or national, its proper sphere of activity, and making such alterations as may seem good from time to time.

But, as has been remarked in the chapter on Federal Governments, the purest form of federation does not admit of the provincial powers being enlarged or curtailed at the pleasure of the federal legislature. If such were the case, the federation would be largely a sham. Sometimes, however, as in the case of Canada, the federal powers exercise the right of veto over the provincial legislatures, and in such cases we have something which, though quite compatible with the federal idea, undoubtedly approximates towards the constitution of the unitary state.

A formal division of the legislative sphere between central and provincial bodies marks every federal union, and it is important always to note whether definite limits are assigned to the action of the central legislature (as in the United States and in Australia), all unmentioned matters falling under the jurisdiction of the federating states, or whether it is the provincial legislatures whose action is restricted (as is the case with Canada), all residuary questions being left to the federal powers. And it should also be noticed whether the federal power exercises a direct control over the citizens of all the states, or can only reach them through the State Governments.[1] In the latter

[1] Less marked, but still important, is the difference between the use of federal officials (as in the United States) or state officials (as in Germany) for the transaction of federal business.

case the federal power is so weak that the term "confederation" rather than "federal state" is usually applied to the union. The federal power is strongest when, as in Canada, it exercises its control over both the provincial governments and all the citizens of the various provinces.

§ 20

But besides the demarcation of the separate spheres of major and minor legislatures, the various ways in which the division of administrative duties between central and local bodies is carried out should be carefully scrutinized. In this, almost more than in the national organization, the influence of the national character can be observed; while, on the other hand, the form of local organization undoubtedly reacts with momentous effect upon the national character. The citizen who from boyhood expects to take, at some time or other, of his own free will, an active part in the administration of local affairs, is likely to be found a very different citizen from the man who may be authoritatively commanded, at the most inconvenient juncture of affairs, to serve his locality without remuneration; and both these from the citizen who perpetually finds himself "cabin'd, cribb'd, confined" by the cramping interferences of an all-pervading bureaucracy.

As types of local administrative systems, we may glance at those adopted in France, Prussia, and the United States of America.

In France the elected councils of the departments, arrondissements, and communes act mainly as advisory and consultative bodies, which may criticize and hamper, but do not seriously control, either the prefects of the departments or the mayors of the towns. These prefects and mayors form the real local executives, and are closely controlled by the central government. The prefect is appointed by the ministry, and in all his actions refers continuously to them and carries out their orders. The mayor, though elected locally, is liable to be suspended from his office by the higher authorities, or even summarily dismissed. The smaller administrative bodies have the most strictly limited powers, and are liable to suspension if they chance to exceed them or otherwise offend the central government. Even the budget of the department is drawn up by the prefect, who also sees to the actual disbursement of the sums voted.

The Prussian local administrative service is characterized by a hierarchy of committees and councils, on which sit two very distinct classes of members—unpaid residents of the locality, and highly trained professional servants of the Prussian bureaucracy. As far as possible, matters of purely local interest are controlled by councils on which the lay members have the preponderating weight. Matters of national interest (including education and the state taxes) are more under professional control. Appeals are carried

from the councils of smaller to those of larger administrative divisions.

In the United States we find a system which contrasts markedly with these. The separate state legislatures (which, of course, must not be considered as local bodies) lay down the law of the state with as much attention to detail as general legislation permits. The law is then carried out by locally elected sheriffs, county treasurers, school committees, etc., each acting with little reference to the others. Scarcely any but the very humblest public servants are appointed from above. There is no local government board for the whole state, and there is practically no appealing from lower to higher elected officials, but only from the officials to the courts of justice.

§ 21

Further, though this may not at first sight seem to be in its right place under the same heading as the rest of the chapter, it should be noted that legislatures may be "sovereign" or "non-sovereign." The English Parliament (King, Lords, and Commons) is the typically sovereign legislature. There is no legal limit to its legislative authority. It is true that judges have not scrupled on occasion to give decisions contrary not only to the letter, but even to the spirit of the law, on the ground that a particular statute has

conflicted with the underlying principles of all law (as has happened in recent Trade Union disputes) ; but such cases are most exceptional, and should almost certainly be counted unconstitutional. Not all legislative bodies, however, have this unrestricted power. Sometimes their authority is limited from above, as in the case of our self-governing colonies, whose constitutions are legally the grant of the imperial parliament. Sometimes it is limited from below, as in the case of Switzerland and the United States, where the nation has reserved certain constitutional provisions as not to be altered by the mere decision of the legislature, and has marked out a definite sphere for the activity of the federal legislature, placing the federal judges alongside of rather than under the legislators, and giving the former authority to set aside laws which have exceeded the limits thus assigned. The Federal Parliament of Australia is remarkable in that its powers are limited to some extent in both these ways.

§ 22

The terms "elastic" and "rigid" are sometimes applied to constitutions according as they are easily susceptible of amendment or the reverse. The extent to which they are so depends partly upon the amount of power allotted to the legislative organ—whether, that is, it is a sovereign or a non-sovereign body—

and partly upon the formularies to be gone through before the proposed change can be enacted.

The English is the typically elastic constitution, the most fundamental changes being carried out by the same parliamentary procedure as the most trifling matters of legislation ; and this, too, seems to be the case in Italy.

As a good example of the rigid form of constitution we may take the American. An amendment must be proposed by the legislatures of two-thirds of the states, or by two-thirds of the members of both Houses of Congress. To be adopted, it must be submitted either to the state legislatures or to specially summoned state conventions, and accepted by three-fourths of the states.

The Prussian constitution is scarcely more rigid than the English, the only peculiar requirement for a constitutional amendment being that it must be voted on twice, a three weeks' interval for reconsideration being allowed to elapse between the first and second vote. Norway and ,Sweden both require that constitutional amendments shall be approved by two successive parliaments before being put into force. In France the two Houses have to agree first that a revision is necessary, and then, coalescing to form the National Assembly, they effect the amendment in joint session. In Germany it is specially provided that a constitutional amendment can be defeated by fourteen out of the fifty-eight voting members of the Bundesrath. In Australia and in Switzerland amendments must be submitted to a popular referendum,

and be accepted by a majority of the voters in a majority of the states or cantons before becoming law. The Canadian constitution is in form an act of the British Parliament, and can only be amended in the same way as any other statute. Theoretically, Canadian wishes cannot affect the matter. Austria-Hungary possesses no common constitution, and there are, therefore, no provisions for constitutional amendment.

PART II

THE SEPARATE CONSTITUTIONS

FRANCE

§ 23

So much has been already said, by way of illustration, concerning French institutions, that this section has been made disproportionately brief.

The French constitution takes the usual symmetrical form of two legislative chambers and a single executive head. The French President is little more than a figure-head—a constitutional monarch of the English type, with a limited term of office, and rather less than a constitutional king's outward majesty. He is elected by the National Assembly for a term of seven years, but no President has yet lasted out the full period. The National Assembly is the body formed by the union of the two Houses when they meet in joint session. This only takes place on the occasion of the election of a President, and, as previously stated,[1] of an amendment of the constitution.

The real executive, as in England, is the Cabinet, but (as was explained in an earlier chapter[2]) it is

[1] § 22. [2] §§ 13, 14.

much weaker than the English Cabinet, except in the matter of administrative justice. The ministers meet either as a Cabinet to discuss matters of policy in secret session, or as the "Council of Ministers" in the presence of the President to exercise a general oversight of the administration. The Council of Ministers has a legal existence, the Cabinet has not. With this dual body we may compare the English Cabinet and Privy Council. Our Cabinet, like the French, is not recognized by the law. Every member of the Cabinet is sworn in as a Privy Councillor, though as membership of the Privy Council is usually retained throughout life, and is an honour sometimes bestowed on non-political persons for non-political reasons, it is not the case that all Privy Councillors are members of the Cabinet. The French Cabinet and Council are coextensive; they are the same body under two different aspects.

The Senate, for reasons already set forth,[1] is a comparatively weak and unimportant body. Besides possessing the ordinary legislative functions, it may be used as a court for the impeachment of political offenders; and its consent is required to a dissolution of the Lower House. But both these functions are little more than nominal, neither dissolutions nor impeachments belonging to the ordinary course of French politics.

The life of the Senate is continuous, one-third of the senators retiring every third year. The senators are elected by composite "electoral colleges" in each

[1] § 6.

department. An electoral college consists of the deputies that represent constituencies of the department in the Chamber of Deputies, of the "General Council" of the Department, and members of the councils of the arrondissements and communes. A senator must be at least forty years of age.

The members of the Chamber of Deputies are elected by universal suffrage, and the limit of the chamber's life is four years. Election must be by absolute majority on the first vote or by a plurality on a second ballot. The committee system (described in § 14) and the absence of broad party divisions[1] make the business of legislation very different from what it is in the English House of Commons.

The United States of America

§ 24

The framework of the United States' constitution presents a superficial resemblance to that of France. In both are to be found a President with a limited term of office, an elected Senate with a continuous life, possessing certain administrative and judicial functions as well as those which ordinarily attach to a branch of the legislature, and a larger House which controls finance and which organizes itself on the committee system.

[1] § 11.

But the differences are as pronounced as the resemblances. The United States, being a federation, has a need for a second chamber[1] which is lacking in centralized France, the country where class distinctions have been so completely stamped out, and where the departments form little more than divisions for the convenience of local government. The United States' Senate is further strengthened by its vast administrative powers, both in connection with the appointment of the federal officials and in the ratification of foreign treaties. It exercises, moreover, a real control over finance. For it almost invariably amends the money bills that are sent up from the House of Representatives, and after its amendments have been promptly and scornfully rejected, a conference of a few members from either House takes place, and the more experienced senatorial delegates get substantially their own way. Like the House of Lords, the Senate possesses nominally the function of a court for the impeachment of offending statesmen. But this function may be set down as now obsolete. Impeachments are little more likely to be resorted to in America than in England.

The Senate is presided over by the Vice-President. This remains that officer's sole function unless the life of the President is cut short. In that case he steps into the President's place. The Vice-President does not even belong to the Cabinet, and may never be consulted by the President during his whole term of office. He is thus as completely cut off from

[2] See also §§ 7, 8.

affairs as a Prince of Wales, while his chances of succeeding to the supreme power are incomparably less. Yet the exigencies of party politics have brought it about that a remarkably large share of political ability has been shelved by the turning of able men into harmless Vice-Presidents. President and Vice-President are nominated at the same time, and while the former is generally a colourless man who is not likely to lose votes by offending any section of his own party, the most strong and striking figure available is usually named for the vice-presidency, in the hope of his attracting votes that would otherwise go to the other side.

The President is elected for four years, and is irremovable except by impeachment. He is no mere figurehead, but the veritable centre of the administration for both home and foreign matters, and exercises a real check on such legislation as he disapproves. He is quite independent of both Houses of Congress, but if he aims at re-election he must, unless extraordinarily popular, allow himself to be largely controlled by the "Machine"—that is, by the leaders of the vast party organizations throughout the federation. In his second term of office this check hardly acts, for custom forbids re-election for a third period. In legislation he exercises a suspensive veto. If within ten days of the passage of a bill he informs Congress that he will not sign it, it does not become law unless again passed by both houses and by a two-thirds' majority in each; while if a bill is an urgent one and meets with his approval, he may bring it into force by

signing it without delay. The President, however, is not to be looked on as a part of the legislature as the King is in England, but rather as an outside power that can intervene at discretion. Bills which are ignored by the President become law without action on his part when the ten days' interval has elapsed.

Apart from this suspensory power, the President does not exercise any real influence over legislation. His annual written "message" to Congress at the beginning of a session is generally an interesting document, but the Houses pay no attention to it. It is by writing, also, that the members of the Cabinet communicate with the Houses, when requested to give information about their respective departments; for no member of the ministry can be a member of Congress. Students familiar with the Constitutional History of England will recall how in the Act of Settlement a similar exclusion of the Ministers from the Commons was temporarily agreed on, though the law was amended before the date at which this provision was to come into force. The adoption of this arrangement in the American Constitution is due to its having been modelled on the English Constitution of the eighteenth century, such alterations being introduced as seemed at the time necessary for curbing the excessive power of the Executive; while the French President and Cabinet reproduce the machinery of contemporary English politics, owing to the later date at which the present French Constitution was framed in imitation of our own. The President of America, it has been well said, is a fossilized George III. with

a limited term of office. The President of the French Republic we have already described as a constitutional king of the type of Edward VII.

The members of the Cabinet are responsible to the President personally, and feel no more concern about the approval or disapproval of Congress than do the judges of the Supreme Court.[1] They are chosen much as the ministers of Tudor or Stuart kings were chosen, simply in accordance with the President's judgment as to the fittest man for each post. They may be called to the Federal Cabinet from state legislatures or state executives, or even from ordinary business life. And here a curious anomaly in a democratic country is worthy of notice, merely as an anomaly. In the event of the President's death, the Vice-President becomes President. In the event of the new President's death, his place is taken by a Secretary of State. And thus the head of the state, under these somewhat improbable circumstances, would be chosen in reality by his predecessor, as would now be the rule in England had the constitutional arrangements of Oliver Cromwell's time survived.

The President is elected by the indirect system. The theory of the constitution framers was that the election should be removed as far as possible from the heat and dust of party strife. Each state should elect of its wisest citizens, excluding those who were

[1] Both judges and cabinet ministers may be impeached for serious misconduct ; but impeachment is a judicial rather than a political procedure.

already corrupted by service in the state legislature, as many presidential electors as it had members in both houses of Congress. These wise and impartial electors should then, following the dictates of their own unbiassed consciences, pick upon the very best and wisest man who could be found to take the helm of state.

A very little consideration will show that the system of indirect election is bound to prove illusory, as long as the intermediate electors have no other corporate function to fulfil, and especially when they are chosen to meet an emergency that has already arisen. The system of indirect election is a success in England, because the members of Parliament who are chosen to make and unmake ministries have so many other important functions to fulfil that their personal character and fitness as legislators, as well as their party leanings, must receive at least some little consideration. The system might also be a success if carried on according to the method adopted in the choice of certain Cambridge professors. Here the electors are appointed for a number of years in advance, vacancies on the electoral body being filled up at regular intervals; and as no one knows when a professorship will be vacant or who will be the candidates for the post when the vacancy occurs, the electors are bound to exercise their real knowledge and their independent judgment. But the American Electoral College consists of mere "dummy" members, none of whom would dare to exercise his individual judgment. Such action, though quite legal, and, indeed, exactly

what was originally intended, would now be counted a most outrageous piece of unconstitutional audacity.

It does not follow, however, that the majority of votes in the Electoral College must coincide always with the majority of votes cast in the election of the electors. For in each state the total number of electors is chosen by a mass vote in such a way that all the electors from one state are bound to be either "Democrats" or "Republicans." Accordingly, a majority of a single vote in a large state like Illinois or New York will outweigh in its effects overwhelming majorities on the other side in three or four of the smaller states. Thus the will of the majority is modified by the intervention of a certain amount of chance; just as it was in the Comitia of ancient Rome, where in similar fashion the majority, whether large or small, within each tribe or century, decided the vote of the whole tribe or century.

To the American House of Representatives each state sends members in proportion to its population. They are elected for a period of two years, and are paid for their services. The working of the committee system and the extraordinary powers of the Speaker have been described in section 14. There is no provision for the dissolution of the House before the close of its two years' life.

With regard to the separate states within the American Union, it is to be noted that none of their legislatures are "sovereign" bodies. Originally, as British colonies, they were limited from above by the terms of the constitutions as laid down in England.

Then, as independent states, their constitutions were re-framed, limited now from below by the reservation of certain amending powers to the citizens of the state.

The position of the executive and judicial officers is widely unlike what we are accustomed to in England. Not only the State Governor, but the Secretaries of State, the judges, the sheriffs, all, in fact, except the most subordinate officials, are elected directly by the citizens, though in some cases they are removable by the head of the Executive. This, of course, means a considerable loss of cohesion in the administration, and also, especially in the case of the judges, a certain loss of efficiency. The contrast between state and federal officials appears very remarkable when it is borne in mind how dependent even cabinet ministers are upon the will of the President. Indeed, most of the judges can hardly be called state functionaries at all, depending as they do on local constituencies for election, though exercising their office subject to appeal from their decisions to the higher state courts.

State courts and federal courts exist side by side, and there is no appeal from a state court to a federal court unless one party to a suit has based his claim on a federal statute or treaty, and the validity of the statute or treaty has been disallowed, or has called in question the validity of some state authority on constitutional grounds, and the validity of the state power has been upheld in the state court. The federal courts deal only with matters which, owing to the nature of

the question involved, could not properly be handled in a state court (such as maritime cases, and cases concerned with conflicting grants made by different states) or in which the parties to the suit are either different states or citizens of different states, or foreign ambassadors accredited to the federal government.

The inability of the Federal Courts, the Federal Executive, or the United States' Congress to interfere with what are legally recognized as purely state matters was strikingly shown a few years ago when certain Italians, resident in Louisiana, were lynched there, and the Louisiana courts failed to give satisfaction. The constitution forbids any state to negotiate on its own account with foreign powers, and the authorities at Washington declaring themselves unable to interfere in the internal affairs of Louisiana, the Italian ambassador was temporarily withdrawn.

The survival of the great corporations popularly known as "trusts" is likewise in the main a result of the inability of Congress to overstep certain limits in legislation. The tiny state of New Jersey, wishing to increase its revenue by a tax on joint stock companies, allowed corporations to be formed within its borders with the object of purchasing the shares and property of other corporations throughout the Union. Though this was precisely what other state legislatures and the United States' Congress were endeavouring to prevent they dared not intervene to penalize the duly incorporated companies of the recalcitrant state. Such deadlocks as these are the almost inevitable consequences of the "rigidity" of the American constitution.

SWITZERLAND

§ 25

Switzerland is a federation, composed of twenty-two tiny cantons, having a constitution presenting many of the same features as the American Union. In both are to be found a President, a smaller House consisting of two members from each state or canton, and a larger House elected on a population basis. But the differences between the two constitutions are many and striking.

Perhaps the most remarkable feature in the Swiss constitution is the small executive body known as the Conseil Fédéral, or Bundesrath. This Federal Council of seven members (who are elected by the National Assembly at the beginning of each three years' term of the lower House of the legislature, but are practically re-elected continuously till they prefer to retire) forms a sort of national board of directors, one of whose number is chosen annually to act as President of the Swiss Confederation. His title, however, carries with it little more than a right of precedence. He acts as chairman of the board, and is the titular head of the nation.

The Federal Councillors resemble rather a group of permanent under-secretaries of state than an English cabinet. For they are elected primarily on account of their administrative capacities, and though their political views are taken into consideration, it is with

a view to obtaining diversity, and not unity, of sentiment among the seven. Even a strong majority, of Conservatives, say, in the National Assembly will not fill a vacancy on the board by electing a Conservative if the Conservatives have already a considerable preponderance there. A constitutional provision also prevents the undue preponderance of any one canton. The Council may not contain more than one member from a single canton, though, by custom, certain of the larger cantons are always represented. The duties of the Federal Council include some judicial functions, and bills are generally put into shape by its members before being brought before the Houses. To such an extent is the Council a non-partisan body that it frames submissively measures of which it utterly disapproves, and which its members afterwards oppose strongly in the legislative chambers. For the councillors have the right to take part in the debates of either House, and have no hesitation in speaking on opposing sides of the same question. Practically, we may say that the executive function in Switzerland, instead of being unified under a single head, is "put into commission" permanently, and at the same time entirely dissevered from all connection with the party views of the members of the commission.

The Swiss legislature consists of two Houses, the National Council and the Council of States, which meet in joint session, as the "National Assembly," to elect the Federal Councillors, the President, the federal judges, and the federal generals, as well as to exercise certain judicial functions. The National

Council, to which each canton sends members in proportion to its population, continues in existence for a term of three years, no provision being made for any dissolution within that period. The Council of States consists of two members from each canton, elected in whatever manner and for whatever period the separate cantons prefer. Unlike the French and American Senates this body has no special functions of its own. But though its influence has tended to decline, it cannot be described as a submissive or subordinate body like most other second chambers.

The judicial system of Switzerland is one which it is particularly difficult for a foreigner to understand. Besides the cantonal courts there is a federal court which decides inter-cantonal matters, cases of treason, important civil cases, etc.;[1] but the Federal Council and the National Assembly also exercise judicial functions. The detailed arrangements are confusing and uninteresting.

More important to notice is the direct control which the nation retains over all questions of legislation, the Houses being kept in as strict subordination to the electorate as the Federal Council is to the legislature. This is due to the constitutional machinery known as the Initiative and the Referendum. By the system of the *Initiative* it is possible for any fifty thousand voters to demand alterations in the law, which alterations must be framed in the National Assembly, and submitted to popular vote. By what is known as the

[1] It has not apparently the power of setting aside, as unconstitutional or invalid, laws passed in due form in the federal legislature.

system of the *Referendum*, all proposed amendments in the constitution must be submitted to a plebiscite, and be approved by a majority of the votes cast in a majority of the cantons before becoming law. Similarly, on appeal, all other legislative changes may be submitted to the referendum. Thus the constituencies are enabled to ignore the party views of candidates for parliament in the same way as the National Assembly ignores the party views of the Federal Councillors. All that a constituency desires is that a member should prove a capable legislator. This may be seen from events that occurred some twenty years ago. After a session in which practically the whole legislative work of the Houses had been ignominiously rejected by referendum after referendum, the next general election was found to have left the parties in the House almost exactly where they were before.

In those of the cantons which have legislatures of their own, the same machinery of Initiative and Referendum is usually to be found in operation. But the cantons are so small that some of them have no elected legislature, but the laws are made by the citizens themselves in mass meeting (Landsgemeinde). The others have all an elected one-chamber legislature (the Great Council) and an Executive Council, this latter being chosen sometimes by the Great Council, and sometimes by direct vote of the people. But in the great majority of cases the same tradition is followed, of ignoring party lines in choosing the executive, as is done in the case of the Federal Executive.

Prussia

§ 26

Prussia is in form a constitutional monarchy, but the Houses exercise in practice very little control over the king and his ministers. The ministers, like the members of the American President's Cabinet, act usually without consultation with one another, and are dependent for their tenure of office on the good-will, not of the Houses, but of the Crown.

The Prussian House of Lords is a composite body containing both hereditary and life members, the latter being mostly appointed on the recommendation of the great landowners or such institutions as the universities and the churches. The Lower House is elected by an indirect method which gives the preponderating influence to wealth. In each electoral district voters are ranged in order according to the amounts which they contribute in direct taxation. Beginning with the chief contributors, those who together pay one-third of the district's taxes are marked off to form the first class; those who contribute a second third form the second class, and the remaining voters the third class. The first class thus contains a few wealthy men only, the second a considerable number of middle-class voters, and the third the vast majority of tax-payers. Each of these classes elects an equal number of electors, who then proceed to elect the district representative.

Thus the Prussian constitution is perhaps the most oligarchical in Europe. But it is by no means the parent of inefficiency. For Prussia owes much to a bureaucracy powerful, all-pervading, and incorruptible, a bureaucracy such as could never have arisen in a country as democratic as England.

GERMANY.

§ 27

The reader must be careful not to confuse the constitution of Germany with that of Prussia. Prussia is certainly the dominant partner in the Empire of which it forms by far the larger half. But Germany is in form a federation, though the vast inequality of its component parts, their unequal representation in both Houses of the legislature and their unequal privileges, as well as the fact that the terms of federation may be altered by the will of the central legislature without special consultation with the separate members,[1] and also the fact that the courts do not venture to pronounce federal legislation passed in due form unconstitutional, all point to the imperfectly federal character of its institutions. It has even been said that the stability of the German federal system is due in large measure to the great preponderance of Prussia and the vast powers wielded by her king, who is also the German Emperor;

[1] There is a provision that no state may, without its own consent, be deprived of a special right guaranteed to it by the constitution. The exact scope of this provision, however, seems a matter of doubt.

whereas in the United States of America the stability of the Union is to some degree the outcome of the fact that no one state has ever become powerful enough to overshadow the others. Moreover, the German Empire has unusually weak frontiers on either flank, and this has rendered the existence of a strong central government essential to its security, turning the country, as it were, into an armed camp in which constitutional checks are never permitted to hamper seriously the authority of its autocratic war-lord.

The central feature in the German system, the pivot, as we may call it, of the federal constitution, is that curious body known as the Bundesrath, or Federal Council. In form it is an assemblage of ambassadors commissioned by the various state governments. The councillors (seventeen from Prussia, six from Bavaria, four each from Wurtemburg and Saxony, three each from Baden and Hesse, two from Mecklenburg-Schwerin, two from Brunswick, and one from each of the other seventeen states)[1] receive treatment very similar to that given to foreign ambassadors; vote strictly in accordance with the instructions of their separate governments; and are sent out, paid, and recalled as suits their several masters. So clearly are they state envoys, and so completely do they abstain from exercising an independent judgment, that the presence of one member of any legation is sufficient for the casting of the whole number of votes to which his state is entitled, and several minor states sometimes

[1] Alsace and Lorraine are represented by non-voting members.

unite together to pay the expenses of a single common representative. Practically, it comes to this, that each state votes separately, but that Prussia's vote counts seventeen points, Bavaria's six points, and so forth.

But the Bundesrath also resembles the English cabinet in its "probouleutic" function of preparing legislation for the consideration of the Reichstag and in exercising a general oversight over the whole administration; while its consent has to be obtained before the Emperor can embark on a war that is not purely defensive. All this implies that the Bundesrath, like our Cabinet, carries on its debates in secret, so as to present as far as possible a united front, though members are by no means precluded, by law or by custom, from speaking in opposition to the views of the majority during subsequent debates in the Reichstag, where every member of the Bundesrath has a right to be present and take part in the discussions.

The Bundesrath also resembles the House of Lords in being the chamber to which all measures must go for approval after having passed the Reichstag. And finally, it has in federal matters some of the functions of a supreme court of appeal, like our judicial House of Lords or the judicial committee of the Privy Council.

The larger legislative chamber, the Reichstag, has little about it that calls for special comment. It is elected by universal manhood[1] suffrage—a fact which

[1] The voting age is twenty-five.

is rather unexpected in the case of a German legislature—but the unreformed division of the electorates gives the great cities, where the radical and socialistic elements are strong, an unfairly small share in the representation. Finance is only partially under the control of the House, because many of the chief revenue laws are more or less permanent in character, not subject, as ours are, to annual revision. The House can criticize the Government (which consists practically of the Emperor and the Chancellor, there being no true cabinet), but the Government is not responsible to the House, while the House can be dissolved by the Emperor on his obtaining the consent of the Bundesrath. The committee system is adopted to some extent in the Reichstag, but not so exclusively as in France and America.

The Emperor, as such, has no power of vetoing legislation. But the Emperor is also King of Prussia, and as King of Prussia he nominates seventeen members (practically twenty, owing to Prussia's control over Waldeck and Brunswick) of the fifty-eight that compose the Bundesrath.

Now, one of the constitutional provisions is that no amendment of the constitution can be carried if fourteen votes in the Bundesrath are cast against it; and it is also specially provided that any alteration in the regulations governing the army, the navy, and the customs can be vetoed by Prussia.

Prussia, moreover, has the casting vote in case of a tie in the voting in the Bundesrath, and the chairmanship of all the standing committees, excepting

that on foreign affairs. This last she does not require, because the commission on foreign affairs does little more than listen to communications from the Imperial Chancellor, who is also usually President of the Prussian Ministry. On the other seven committees certain of the states have a special right to representation, while the remaining seats are filled by members from states designated from time to time by the Emperor or the Bundesrath.

To sum up. Germany is a federation presided over by the King of Prussia, who is all-powerful in a kingdom forming the larger half of the empire. Most of the other partners in the federation are despotically ruled kingdoms and principalities possessing a semblance, but a semblance only, of constitutional freedom. The Emperor governs through a Chancellor, personally responsible to himself, who presides over the Bundesrath. The Bundesrath is in form a council of ambassadors commissioned by the various state governments, and combines some of the functions of an English Cabinet with functions belonging elsewhere to a Supreme Court of Appeal, while it also acts as a second legislative chamber before which all measures must be brought before becoming law. The Reichstag is a chamber elected by universal suffrage, which can criticize and sometimes hamper by its opposition the action of the central government, but which does not effectively control it.

Austria-Hungary

§ 28

The union of Austria and Hungary may perhaps best be described as a permanent partnership between a federal empire and an imperfectly unified kingdom. Austria itself is a conglomeration of discordant kingdoms, duchies, and counties; while on the Hungarian side Croatia forms a semi-detached appendage. Bosnia and Herzegovina are under the control of the joint Austro-Hungarian government.

But though this partnership has lasted for over three centuries, it is maintained only as a grudging concession to political necessities, and, excepting in business relationships, a Hungarian is still legally a foreigner in Austria, or an Austrian in Hungary. There is a common monarch, the Emperor-king, and a system of Joint Ministries for the control of foreign affairs, the army, the joint budget, and the government of Bosnia-Herzegovina; but there is no common constitution, and such matters as the customs and the army regulations have to be settled either by parallel but independent acts of legislation or by formal agreements of an almost international character. The joint ministries are subject to the control of the "Delegations," two annually elected committees consisting of forty members from the lower and twenty from the upper chamber of either division of the

dual monarchy. These two delegations never debate together, but when a point of difference cannot be otherwise settled they combine, not indeed to discuss, but only to vote upon the question, the numbers having been previously equalized (if any members from either are unavoidably absent) by reducing by lot the contingent that happens to be the more numerous. The powers of the delegations are not extensive, but the members act on their own judgment, and not according to instructions from the national legislatures or governments.

In Hungary, the Table of Magnates corresponds to our House of Lords. But the nobility are so numerous that only the wealthier attend in their own right. Besides these hereditary members, the Table contains certain ecclesiastical representatives, certain official members, a number of life peers, and such royal archdukes as have estates in Hungary. There are also three representatives from Croatia-Slavonia (which has a separate Landtag of its own).

In the Table of Representatives (the Hungarian House of Commons) there are four hundred and thirteen Hungarian, and forty Croatian members. The Croatians always withdraw when purely Hungarian matters are under discussion, in the same way as Mr. Gladstone's Home Rule Bill provided that the Irish members should withdraw when purely English or Scottish matters were being discussed.

In the Austrian half of the monarchy there are seventeen provincial parliaments (called Landtags) besides the national Reichsrath. All matters not

specially allotted to the Reichsrath fall under the jurisdiction of the Landtags.

The Reichsrath is composed of a House of Lords (which consists of a number of hereditary nobles, as well as certain bishops, royal princes, and life members nominated by the Emperor), and a House of Representatives. For the election of the latter the voters are divided into five classes according to status and occupation, and a member of the House represents not so much a district as the landowners, say, or the rural communes of a district. Eighty-five members are elected by the great landowners, one hundred and eighteen by the cities, twenty-one by the chambers of commerce, one hundred and twenty-nine by the rural communes, and seventy-two by the fifth or "general" class.

The inhabitants of the seventeen provinces speak a great many different languages (eight have to be officially recognized in the legislature), and there is much bitter hostility between province and province. At times all the representatives of a province have withdrawn from the House in the hope of preventing a quorum.

The Austrian Ministry is nominally responsible to the Houses, but in reality it is dependent on the Emperor. In Hungary the legislature really controls the Cabinet, the party system being, perhaps, a greater success here than in any other part of the continent. As, moreover, Hungarian statesmen are good party managers, the policy of the joint Government follows in the main the wishes of the Hungarian party

majority. Thus it is said that Hungary, while bearing only one-third of the total expenses incurred by the union, possesses fully two-thirds of the actual power.

Scandinavia

§ 29

Scandinavia forms a dual monarchy, the constitution of which resembles in many ways that of Austria-Hungary. There is a common sovereign, whose powers are considerable—he exercises among others the same sort of supplementary legislative powers as were attached to our sixteenth-century kings[1]—but there is no common Ministry. Instead, it is provided that when matters affecting Norway are discussed in the Swedish Council, a Norwegian member shall be present, and when Swedish matters are discussed in the Norwegian Council, a Swedish councillor shall take part. Both countries have two Houses of Parliament. But the upper chamber of the Swedish Ricksdag is elected by the local representative bodies (county councils and municipal councils), each member holding his seat for nine years from his election ; while the Norwegian upper House is chosen from among their own number, by the members of the lower House. Matters of common interest that lie beyond the King's prerogative are arranged, as in Austria-Hungary, by concurrent legislation. There is

[1] See also § 18.

no common citizenship, subjects of either country being aliens in the other ; and there is considerable jealousy in Norway of the preponderating influence of Sweden in the joint policy of the two countries. The Cabinets stand midway in character between English or French Ministries responsible wholly to Parliament, and Prussian or American Ministries responsible only to the head of the executive. The practical equality of the two Houses in Sweden introduces a further complication, the Ministries being as much, or as little, afraid of the one as they are of the other. In the Norwegian Storthing, the upper chamber (or Lagthing) exercises but a slight controlling influence as against the lower House (the Odelsthing). A measure twice rejected by the Lagthing is determined in joint session, and in joint session the Odelsthing outnumbers the Lagthing by three to one. Constitutional and financial questions are similarly settled in joint session ; the former, both in Norway and in Sweden, further requiring to be carried in two successive Parliaments before becoming law.

Other European States

§ 30

Holland, Belgium, Denmark, Spain, and Portugal may all be described as constitutional monarchies with bicameral legislatures. In Portugal the upper House is for the future to be composed of nominated members only ; in Spain it is made up half of elected members and half of life peers, some nominated by

the Crown, some sitting in their own right. The Danish House also contains a few nominated members, but in the main resembles those of Holland and Belgium. In these three countries it is an elected chamber, the electoral divisions being somewhat larger than those which send members to the lower House; a property or age qualification is required either for candidates or for voters or both; and it has in each case a continuous life, one-half or one-third of the members retiring at regular intervals.

The Italian system seems to stand about midway between the English and the French. There is a constitutional monarch whose power and influence do not differ greatly from those of an English king, though the multiplicity of parties allows him somewhat more freedom of choice between different leaders when a change of government takes place. The Senate consists of royal princes and nominated life-members. These nominated life-members must be qualified in certain specified ways—they must have served a certain number of years as deputies, have been so many years members of the Royal Academy of Science, or be deserving of exceptional honour for service to the state, etc., etc. But though the qualifications may seem very elastic, the King's freedom of appointment is much limited in practice by the Senate's right to pass judgment on the new members' claims to be admitted—a right which is exercised with no little stringency. Like the upper chambers of England, France, and America, the Senate can be constituted a court for the impeachment of political offenders.

The suffrage on which the Italian House of Deputies is based is very narrow, but otherwise the House calls for little special comment. The committee system[1] and the system of interpellations both exist (though in a modified form), and they tend, as in France, to induce instability of cabinets.

The constitution, as in England, can be modified by the ordinary procedure of legislation.

The British Empire

§ 31

Within the British Empire we find many replicas of the constitution of the mother country. A Governor sent out by the English Cabinet takes the place of the King. Usually, he retains a little more freedom of action with regard to dissolutions of the Houses, while he has the right to hold over legislation of imperial importance in order to obtain the approval of the Home Government before giving it his assent. Sometimes, also, he has a little more freedom of choice between rival claimants for ministerial honours when a change of Governments is necessary. Otherwise the Governor is little more than a social figurehead. In his absence his place is often taken by the chief justice of the colony.

There are almost invariably two Houses of Parliament—Ontario, Manitoba, and British Columbia have already been noticed as exceptions. The upper is

[1] See § 14.

sometimes nominated by the Crown—that is, by the Colonial Ministry—sometimes elected by a restricted electorate from among the propertied classes. Canada and New South Wales offer examples of the former, Victoria of the latter method.[1]

Of the two great federations that remain within the Empire, the Canadian is by far the more monarchical in form. Its constitution is a gift of the Imperial Parliament, and changes in its provisions must similarly be matters of imperial favour. The provinces have reserved to them but a scanty measure of legislative power, their laws being subject to veto by the Dominion Cabinet. The senators, like English peers, are creatures of the Crown—"the Crown" in Canada meaning, as in England, the ministry of the day. They represent the provinces in unequal but specified proportions, and hold their seats for life.

The younger Commonwealth is a more democratic creation. The federal constitution, debated in public, clause by clause, through many years, came into force, like the other, as an act of the Imperial Parliament. But within limits (which are not very constraining) the people of Australia may frame the terms of the union anew, setting their own house in order without reference to Westminster. Each state sees its legal equality with its fellows recognized in its equal representation in the Senate—a House resting on as democratic a foundation as any legislative

[1] Colonial Parliaments, it should be noted, are not on a level with the Imperial Parliament. Their position is doubly subordinate. Colonial legislation may fail through not receiving the assent of the King in Council ; it may be overridden by the King in Parliament.

chamber in the world—even the first elections sending up to it more labour members than found seats in the larger House.

The Australian states, moreover, have only granted to the federal powers the right to deal with specified matters. Outside the limits laid down, each is as nearly "sovereign" as it was before. The Canadian provinces, on the other hand, have surrendered all but a brief schedule of questions to the arbitrament of the Dominion executive and legislature. The legislative rights retained are a mere shadow of those elsewhere possessed by colonies ranking as self-governed.

The Empire splits naturally into two sections—on the one hand the self-governing colonies (whose curious condition of autonomous protected dependence may perhaps be paralleled in the future by the relations of the South American republics, under the Monroe Doctrine, to the other great Anglo-Saxon power), and on the other India, the Crown Colonies, and the fortified coaling stations.

The Indian Empire inevitably suggests comparison with the Roman, for in India especially we see the Englishman as the law-giver and road-maker of the modern, even as the Roman was of the ancient world. Both empires were fashioned out of a medley of peoples speaking many tongues, and worshipping many strange gods. Like the Roman, the Indian Empire appears as a military despotism, in which the voice of the people, though not unheeded by their rulers, is scarcely a constitutional force. As

military empires relying on professional armies for defence, both have felt a ceaseless anxiety for a strong natural frontier—an anxiety which has driven the later as well as the earlier into a will-o'-the-wisp search after impassable mountains or impenetrable deserts, and has resulted in the continual seizure of outposts for additional security beyond the frontier; those outposts soon necessitating in turn a further advance towards some other "impregnable barrier" in the distance. Such is the almost inevitable result where a nation's own arms are not available for its defence, where every citizen is not, as the Spartans put it, one of the bricks in his country's fortifications.

Further, we note in India, as in the Roman Empire, the presence of many dependent kingdoms which the ruling power hesitates long before completely absorbing, waiting sometimes till they lapse to the suzerain through the extinction of a local dynasty.

Mr. Bryce, in his *Studies in History and Jurisprudence*, points out as another curious parallel that the time-distances for the despatch of troops from the seat of the central government to the extreme frontiers—from London to furthermost Burmah, or from Rome to the Caledonian walls—are almost identically the same.

More striking is the vast difference of character and race between ruler and ruled which we observe in India, but not in the earlier empire. The Romans, whose paths of empire radiated in all directions from their central home, easily assimilated the conquered

provincials, or were assimilated by them. The English, descending on India almost as if from another planet, find it impossible to form permanent abodes in the inhospitable climate, but come and go as birds of passage—strangers and sojourners.

For a parallel to our self-governing empire we turn equally naturally to that Athenian Empire which grew out of the Confederacy of Delos. In both we find the same principles of individual freedom, the Athenian citizen being rather at a disadvantage than otherwise in the law courts of the dependent cities, though an appeal lay generally to the Athenian Heliæa, as it does from our colonies to the Privy Council. Athens resembled England, too, in being a small maritime state placed among jealous rivals, dependent for her very existence on supplies from abroad, and recognizing in her fleet "her all-in-all." The Confederacy of Delos sprang into being in consequence of the national dread of Persia, even as the first British Empire gained much of its cohesion from dread of France and Spain, and fell to pieces after the fall of the French power in Canada, to be reconstituted later on a firmer basis.

But the Athenian Empire was built up by the annexation of previously independent sovereign states. The white portions of ours, with the exceptions of the Orange River Colony and the Transvaal, have never known periods of independent self-government. The constitutions of the Athenian dependencies tended steadily to grow alike, becoming gradually assimilated to that of the imperial city. Our Colonial

constitutions—originally modified copies of our own —tend rather to grow apart, as each daughter-state works out for herself the scheme that suits best her individual genius. Athens, moreover, demanded of her dependencies a heavy tribute for imperial purposes, whereas in the British Empire the "weary Titan" bears almost unaided the great burden of the joint defence.

The Athenian confederate cities, we may say, were like a bundle of faggots bound together by the bond of superior might. The British Empire resembles rather a living tree that buds forth branch and fruit, growing in strength and hardihood as the years pass on.

When revolts occurred at Naxos, at Thasos, in Eubœa, Athens struck instantly and struck hard. Rebellions in Victoria, in Quebec, in Manitoba, have been invariably followed by concession and reform. For Athens was a stern and exacting despot, the "Tyrant City" set over a jealous company of fair cities and islands, that looked back regretfully and impatiently on an earlier golden age of freedom; while England resembles the mother rather than the mistress, in a household which may know passing discontents, but few lasting enmities, and where kinship and kindred institutions rather than great fleets and powerful armies are the guarantees of a happier fortune than fell to the lot of Athens or of Rome.

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